

YAU JIOK HUA

a

v.

SYKT KILANG BATU-BATA CHIP SIAH SDN BHD

HIGH COURT MALAYA, MELAKA

b

AUGUSTINE PAUL J

[CIVIL SUIT NO: 22-130-97]

12 JUNE 1998

LEGAL PROFESSION: Remuneration - Taxation of costs - No agreement as to costs - Gross sum bill delivered over six months ago - Client did not request bill containing detailed items - Proceedings for recovery of costs commenced by counsel - Whether client precluded from having bill taxed - Legal Profession Act 1976, ss. 121(1)(b), 126(1) & 128(1)

c

LEGAL PROFESSION: Remuneration - Bill of costs - Meaning of - Whether gross sum bill amounts to bill of costs - Legal Profession Act 1976, s. 132 - Rules of the High Court 1980, O. 59 r. 24

d

LEGAL PROFESSION: Remuneration - Taxation of costs - Reference to taxation of bill of costs in ss. 126(1) & 128(1) Legal Profession Act 1976 - Whether refers to taxation of bill containing detailed items only or whether includes taxation of gross sum bill

e

LEGAL PROFESSION: Remuneration - Bill of costs - Reference to bill of costs in s. 124(1) Legal Profession Act 1976 - Intention of Parliament - Whether refers to bill containing detailed items only or whether intended to cover gross sum bill also - Whether wide enough to cover gross sum bill

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LEGAL PROFESSION: Remuneration - Costs - Clients' rights - Legal Profession Act 1976, ss. 121(1)(a), 126(1) & 128(1)

STATUTORY INTERPRETATION: Construction of statutes - Word used consistently in a statute - Whether word must be given same meaning consistently - Whether meaning other than ordinary meaning may be given if context so requires

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The plaintiff, an advocate and solicitor, delivered to the defendant a gross sum bill for a contentious matter in which he acted on behalf of the defendant. There was no agreement between the parties in respect of the plaintiff's costs. Although the defendant objected to the bill, he did not act further. More than six months later, the plaintiff served a writ for the recovery of the costs. Within a month of the service of this writ, the defendant applied for taxation of the plaintiff's gross sum bill pursuant to s. 121(1)(b) of the Legal Profession Act 1976 ('LPA').

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- a* Section 126(1) LPA read with s. 128(1) LPA suggests that unless there are special circumstances, an order for the taxation of a bill of costs cannot be granted upon the expiry of six months from the delivery of a bill of costs. Section 121(1)(b) LPA, meanwhile, suggests that a client is entitled to have a gross sum bill taxed upon request if he does so before the expiry of one month from the service of the writ or other originating process claiming the sum due.
- b*

- The plaintiff argued that s. 121(1)(b) LPA applies only when an action for the recovery of costs is commenced without delivery of a gross sum bill. Thus, he argued that s. 126(1) LPA applied and since the six month period prescribed therein had expired, the defendant had lost his right to taxation unless special circumstances could be shown.
- c*

- The defendant, meanwhile, submitted that s. 121(1)(b) LPA was the applicable provision since an action for the recovery of costs had been commenced. Therefore, he argued that he was entitled to have the bill taxed so long as the request was made within the one-month period prescribed in s. 121(1)(b) LPA.
- d*

Held:

- e* [1] By s. 124 LPA, the delivery of a bill of costs is a condition precedent to the commencement of an action for the recovery of the costs except as authorised by the LPA.
- [2] A bill of costs is a bill that contains detailed items in the manner prescribed by O. 59 r. 24 of the Rules of the High Court 1980 ('RHC'). Thus, a bill not drawn up as required by O. 59 r. 24 of the RHC is not a bill of costs within the meaning of the rule and, consequently, s. 132 LPA.
- f*
- [2a] The reference in s. 126(1) LPA to the right of taxation of a bill of costs clearly contemplates a bill of costs that is ready for taxation within the meaning of s. 132 LPA read with O. 59 r. 24 of the RHC. As s. 128(1) LPA refers to the six month period in s. 126(1) LPA, it must also refer to a bill in the same form.
- g*
- [2b] A gross sum bill cannot be described as a bill of costs as it does not contain the required particulars stated in O. 59 r. 24 of the RHC.
- h*
- [2c] The phrase "bill of costs" in ss. 126(1) and 128(1) LPA cannot accommodate a gross sum bill as it is not a bill in taxable form within the meaning of s. 132 LPA read with O. 59 r. 24 of the RHC. Therefore, a gross sum bill cannot come within the scope of ss. 126(1) and 128(1) LPA.
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- [2d] The law applicable to a gross sum bill is therefore as stated in s. 121 LPA. *a*
- [3] Section 124(1) LPA requires a bill of costs to be delivered to the chargeable person before an action can be commenced for the recovery of costs. The reference to the delivery of a “bill of costs” in the section will, on a literal reading of the section, exclude a gross sum bill from its ambit in the light of the meaning ascribed to the phrase. This will preclude the commencement of an action to recover costs based on a gross sum bill. *b*
- [3a] The meaning ascribed to the phrase “bill of costs” in ss. 126 and 128 LPA can be departed from in interpreting s. 124(1) LPA if the context in which it is used in the latter section warrants it. *c*
- [3b] The underlying theme of s. 121 LPA which deals with gross sum bills is the delivery of such bills to the persons chargeable before the commencement of an action to recover the costs. Though the section itself does not expressly require the delivery of a gross sum bill before the commencement of an action, it is worded on an implication that there must be such delivery. Section 121 LPA must therefore be read as being subject to s. 124(1) LPA in the light of the reference that it makes to the delivery of gross sum bills. That will require s. 124(1) LPA to be interpreted to include both forms of bills. If such an interpretation is not given to s. 124(1) LPA, the language employed in the section will preclude the commencement of an action based on a gross sum bill and render s. 121 LPA meaningless. *d*
- [3c] The use of the words “... recovery of any costs due for any business done ...” in s. 124(1) LPA preceding the words “... bill of costs ...” is wide enough to cover the costs in both the forms of bills. *e*
- [3d] Parliament intended to make s. 124(1) LPA applicable to both the forms of bills and accordingly, the phrase “bill of costs” therein cannot be given a literal interpretation as it implicitly refers to both forms of bills. The implication of the section makes it necessary to modify it in order to construe it in its proper perspective and context. *f*
- [4] A solicitor’s bill of costs may, at his option, either contain detailed items or be for a gross sum. Pursuant to s. 121(1)(a) LPA, the party chargeable upon whom a gross sum bill has been delivered may require the advocate and solicitor to deliver to him *in lieu* of the cost a bill containing detailed items, and the gross sum bill shall thereupon be of no effect. Upon delivery of the bill containing the detailed items the *g*
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- i*

- a* party chargeable may, if he desires to have the bill taxed, by petition obtain an order to that effect as provided by s. 126(1) LPA. If he does not take any action after having received the bill containing the detailed items then the sanctions contained in ss. 126(1) and 128(1) LPA shall apply.
- b* [5] If the party chargeable does not take any step after service on him of the gross sum bill and an action is commenced for the recovery of the costs, his only remedy is to request for an order of taxation within a period of one month from the service on him of the writ or other originating process claiming for the costs. The taxation shall be on the gross sum bill as provided by s. 121(b) and (c) LPA. Needless to say, he would have lost his right to a bill containing detailed items.
- c*

[Defendant's application allowed with costs.]

- d* **Cases referred to:**
Accident Touring & Advisory Committee v. Combined Motor Industries Pty Ltd [1987] VR 529 (**refd**)
Aitkin v. The Commonwealth of Australia [1972] 46 ALJR 631 (**cit**)
Ali v. Wolkind [1975] 1 WLR 170 (**cit**)
Arataki Honey Ltd v. Minister of Agriculture & Fisheries [1979] 2 NZLR 311 (**cit**)
- e* *Australian Alliance Assurance Co Ltd v. Attorney General (Qld)* [1916] St R Qd 135 (**cit**)
Bakker v. Stewart [1980] VR 17 (**cit**)
Braunack v. Goers [1979] 23 SASR 1 (**refd**)
Brisbane City Council v. Attorney General (Qld) [1905] 5 CLR 695 (**cit**)
Commissioner of Pay-roll Tax v. RG Elsegood & Co Pty Ltd [1983] 1 NSWLR 223 (**cit**)
- f* *Cooper Brookes (Wollongong) Pty Ltd v. Commissioner of Taxation (Cth)* [1981] 147 CLR 297 (**cit**)
Craig Williamson Pty Ltd v. Barrowcliff [1915] VLR 450 (**cit**)
Ex parte Farmers Fertilizers Corp Ltd [1916] 16 SR (NSW) 645 (**refd**)
Ganke v. Deputy Commissioner of Taxation of the Commonwealth of Australia [1975] 25 FLR 98 (**cit**)
- g* *Hamilton Harbour Commissioners v. City of Hamilton* [1976] 1 MPLR 133 (**cit**)
Kesultanan Pahang v. Sathask Realty Sdn Bhd [1998] 2 CLJ 559 (**refd**)
Macquarie University v. Ryde Municipal Council [1977] 1 NSWLR 304 (**cit**)
Madras Electric Supply Corp Ltd v. Boarland [1955] AC 667 (**cit**)
- h* *Milford Haven Conservancy Board v. Inland Revenue Commissioners* [1976] 1 WLR 817 (**cit**)
Mort v. Bradley [1916] SALR 129 (**cit**)
R v. Curran & Torney [1983] 2 VR 133 (**cit**)
Re Pratt [1972] QWN 69 (**cit**)
Saif Ali v. Sydney Mitchell & Co (A firm) AC 198 (**refd**)
- i* *Salemi v. MacKellar (no 2)* [1977] 137 CLR 396 (**cit**)

(a) at any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of three months from the date of the delivery to him of the bill, the party chargeable therewith may require the advocate and solicitor to deliver to him *in lieu* of the cost a bill containing detailed items, and the gross sum bill shall thereupon be of no effect;

- a** (b) where an action is commenced on a gross sum bill, the court shall, if so requested by the party chargeable therewith before the expiration of one month from the service on that party of the writ or other originating process, order that the bill shall be taxed;
- b** (c) if a gross sum bill is referred to taxation, whether under this section or otherwise, nothing in this section shall prejudice any rules of court with respect to taxation and the advocate and solicitor shall furnish the taxing officer with the details of any of the costs covered by the bill as the taxing officer may require.
- c** (2) Subsection (1) shall not apply to fees paid to an advocate and solicitor who is briefed as a senior counsel.

d Under this section the solicitor has the option to deliver a gross sum bill *in lieu* of detailed items to his client in respect of contentious business done by him. If a gross sum bill is delivered the client has three months from the date of delivery of the bill in which to ask for a bill containing detailed items, unless process for payment has already been commenced. If the client asks for detailed items during the three months, the gross sum bill will be null and void, and the client will be entitled to have the detailed bill taxed. Should, however, the solicitor commence proceedings on a gross sum bill the client will be entitled to ask for taxation if he does so before the expiration of one month from the service on him of the writ or other originating process. If a gross sum bill is referred to taxation it will rest with the taxing officer to ask for such details of any of the costs covered by the bill as he may require during the course of the taxation.

f I shall now read s. 126.

Section 126

- g** (1) An order for the taxation of a bill of costs delivered by any advocate and solicitor may be obtained by a petition as a matter of course by the party chargeable therewith, or by any person liable to pay the cost either to the party chargeable or to the advocate and solicitor, at any time within six months from the delivery of the bill, or, by the advocate and solicitor after the expiration of one calendar month, and within a year from, the delivery.
- h** (2) The order shall contain such directions and conditions as the court thinks proper, and any party aggrieved by any order of court may apply by summons in chambers that the same may be amended or varied or set aside.
- i** (3) In any case where an advocate and solicitor and his client consent to taxation of a solicitor's bill the Registrar may proceed to tax the bill notwithstanding that there is no order therefor.

Under this section an order for the taxation of a bill of costs delivered by any advocate and solicitor may be obtained by a petition as a matter of course by the party chargeable therewith at any time within six months from the delivery of the bill. The advocate and solicitor may obtain an order for taxation by petition between the period of one month and one year from the date of delivery of the bill of costs. Both parties may proceed to taxation by consent without any such order.

Finally I shall read s. 128.

Section 128

- (1) After the expiration of six months from the delivery of a bill of costs, or after payment of the bill of costs, no order shall be made for taxation of a solicitor's bill of costs except upon notice to the advocate and solicitor and under special circumstances to be proved to the satisfaction of the court.
- (2) No such order for taxation shall in any event be made after the expiry of one year from the delivery of the bill of costs.

This section provides that after the expiration of six months from the delivery of a bill of costs or after payment of the bill of costs no order shall be made for taxation of a solicitor's bill of costs except in the circumstances enumerated therein. Subsection (2) of the section provides that no such order for taxation shall in any event be made after the expiry of one year from the delivery of the bill of costs. It is therefore clear that an order for taxation of a bill of costs must be obtained within six months from the delivery of the bill (see *Vije & Co v. Co-operative Central Bank Ltd* [1991] 2 CLJ 1403; [1991] 3 MLJ 432) except upon notice to the advocate and solicitor and under special circumstances to be proved to the satisfaction of the court.

The underlying feature of the conflict between s. 121(1)(b) and s. 126(1) read with s. 128(1) that surfaced in the course of the submission of both parties would appear to arise where a solicitor delivers a gross sum bill and commences proceedings for its recovery after the expiry of six months from its delivery in the absence of any request from the client for a bill containing detailed items as provided by s. 121(1)(a). In such circumstances it would appear that the client would be unable to obtain an order for taxation as a matter of course as the six-month period prescribed by s. 126(1) read with s. 128(1) would have expired unless there are special circumstances in his favour. On the other hand s. 121(1)(b) would appear to entitle him to have the bill taxed upon request if he does so before the expiration of one month from the service of the writ or other originating process claiming the sum due even though the six month period had expired. If in fact there is a conflict

a between both the provisions it would mean that the commencement of an action six months after the delivery of a bill of costs would render the right conferred by s. 121(1)(b) otiose. The sequence of events in this case is anchored on this apparent conflict.

b Having identified the fundamental legal issue involved in this case it is now appropriate to state briefly the facts of the case that warranted a consideration of the provisions of the LPA in question. Yau Jiok Hua (“the plaintiff”) is an advocate and solicitor in Melaka practising under the name and style of Messrs Yau Jiok Hua & Co at No 116, Jalan Munshi Abdullah, 75100 Melaka. The defendant retained his services to act as its solicitor in a contentious land reference matter before the High Court in Malaya at Melaka. The plaintiff succeeded in getting an additional compensation in the sum of RM4,764,806 for the defendant. There was no agreement between the parties in respect of the plaintiff’s costs. On 10 January 1996 the defendant, at the request of the plaintiff, paid him fees amounting to RM100,000. On 27 May 1997 the plaintiff delivered a gross sum bill to the defendant for the balance due. The material parts of this bill read as follows:

<i>e</i>	To our professional charges for successfully obtaining additional compensation in the sum of RM4,764,806.00 together with interest of 8% p.a. from 1.1.95 until payment	<u>RM380,000.00</u>
		RM380,000.00
	Less Amount Paid	<u>RM100,000.00</u>
	Balance due	<u>RM280,000.00</u>

f (Ringgit Malaysia Two Hundred and Eighty Thousand only)

Sd.

...
Yau Jiok Hua & Co.

g By its letter dated 27 May 1997 the defendant objected to the bill as being exorbitant and unconscionable and asked the plaintiff to refer the matter to the registrar for taxation. The plaintiff’s reply to this letter is dated 6 June 1997. The material parts of the letter read as follows:

h We also refer to your reply dated 27th May 1997. We dispute your allegation that our bill was exorbitant or unconscionable. On the contrary, we believe our bill was fair and reasonable in view of the large amount of additional compensation and interest awarded by the court.

i Please note that we do not consent to have our bill taxed under Section 126(3) of the Legal Profession Act, 1976 and therefore if you desire to do so you should obtain an order for taxation under Section 126(1) thereof.

Take Notice that unless you obtain such an order as aforesaid we intend to file an action for the recovery of the balance sum due to us after the expiry of 6 months from the date of delivery of our bill without further reference to you. **a**

The defendant did not take any further step in the matter till the plaintiff issued his writ for the recovery of the costs after the expiry of the six-month period on 9 December 1997. The writ was served on the defendant on 24 December 1997. On 22 January 1998 the defendant filed an application pursuant to s. 121(1)(b) praying for an order, *inter alia*, for taxation of the plaintiff's gross sum bill dated 23 May 1997. In substance the case for the defendant, as affirmed in the affidavit in support of its application, is that it is entitled, as of right, to have the bill taxed upon request in accordance with s. 121(1)(b) as the plaintiff has commenced action for the recovery of the costs. **b**
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At the hearing of the application before me the submission of both parties centered on the conflict between ss. 121(1)(b) and 126(1). The plaintiff contended that under the LPA the right of a party chargeable with a bill to an order for taxation in respect of a contentious business arises under three different circumstances. They are – **d**

- (a) where a gross sum bill has been delivered (ss. 126(1) and 121(1)(a));
- (b) where there is an agreement under s. 116 with regard to the costs and the party chargeable with the bill challenges the agreement; and **e**
- (c) where no bill has been delivered but the advocate and solicitor commences an action on a gross sum bill (s. 121(1)(b)).

The plaintiff stressed forcefully in his argument that s. 121(1)(b) can only apply where an advocate and solicitor commences an action against a party chargeable on a gross sum bill without having delivered the bill thus giving him no opportunity to avail himself of the right to taxation as provided by ss. 121(1)(a) or 126(1). He said that to construe s. 121(1)(b) in order to make it applicable to a situation where a gross sum bill has been delivered without being subjected to the time limit imposed by s. 126(1) read with s. 128(1) would give rise to a direct conflict between s. 121(1)(b) and the other two sections. He added that as the bill had been delivered to the defendant s. 121(1)(b) does not apply with the applicable provision being only s. 126. He thus concluded by saying that as the six-month period provided by s. 126(1) had lapsed since the delivery of the bill and the commencement of the action without the defendant applying for an order for taxation, it has lost its right to taxation in the absence of any special circumstances having been shown. **f**
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- a* In his submission learned counsel for the defendant said that the taxation of a solicitor and client bill may arise in three circumstances. They are –
- (a) where there is an agreement between the solicitor and the client as to costs with regard to contentious business done taxation may nevertheless be ordered under the provisions of ss. 118(3), 119(2) and 120(2);
- b*
- (b) where an action has been commenced on a gross sum bill the party chargeable therewith may request for taxation before the expiration of one month from the service on him of the writ or other originating process under s. 121(1)(b); and
- c*
- (c) where a petition is made for an order for taxation as provided by s. 126(1).

He said that s. 121 is specific as it only applies to cases where –

- d*
- (a) the advocate and solicitor had been retained by his client in respect of contentious business;
- e*
- (b) there has been no agreement for remuneration under s. 116;
- e*
- (c) a gross sum bill has been delivered to the client;
- f*
- (d) an action on the gross sum bill has been commenced by the solicitor against his client; and
- f*
- (e) one month has yet to lapse from the date of service of the writ or other originating process commencing the action on the gross sum bill.

In such circumstances s. 121(1)(b) expressly enables the client to request for the taxation of the gross sum bill within the prescribed time limit. On the other hand, he said, ss. 126(1) and 128(1) are general in nature as they apply both to contentious and non-contentious business and are only applicable where –

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- (a) a petition has been made by the party chargeable on a bill of costs within six months from the date of delivery of the bill; or
- h*
- (b) where the advocate and solicitor makes a petition for taxation between one month and one year from the date of delivery of a bill of costs.

He argued that if ss. 121(1)(b), 126(1) and 128(1) are to be read together then on the facts of this case the one-month period to request for taxation as provided by s. 121(1)(b) will be rendered meaningless as the six-month period contemplated by ss. 126(1) and 128(1) had expired at the time the action to

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recover the costs was commenced. Accordingly, he contended that the general provisions contained in s. 126(1) and 128(1) cannot be interpreted to interfere with the specific provision made in s. 121(1)(b). He said that the application of the rule of construction *generalia specialibus non derogant* in this case will enable the two conflicting provisions to operate harmoniously. Consequently, he said, the defendant is entitled to an order for taxation without being affected by the six-month period prescribed by s. 126(1) read with s. 128(1) as it had made a request for taxation within the one-month period as prescribed by s. 121(1)(b).

I shall now consider the rival contentions of the parties. It will be recalled that the main plank of the plaintiff's argument is that s. 121(1)(b) becomes applicable only when no bill has been delivered and the advocate and solicitor commences an action for the recovery of his costs. He said that this interpretation would ensure that there is no conflict between s. 121(1)(b) and s. 126(1) read with s. 128(1) as s. 121(1)(b) would then become inapplicable with s. 126(1) being the only governing law. It is my view that the submission advanced by the plaintiff crumbles by itself in the face of the requirement of s. 124 which reads as follows:

- (1) Except as authorised by this Act, no advocate and solicitor shall without the leave of the court commence or maintain any action for the recovery of any costs due for any business done by him until the expiration of one month after he has delivered to the party to be charged therewith, or sent by post to, or left with him at, his office or place of business, dwelling house or last known place of abode, a bill of costs, which bill shall be signed either by the advocate and solicitor, or in the case of a partnership, by any of the partners, either with his own name, or with the name or style of the partnership, or by another advocate and solicitor employed by the first-named advocate and solicitor or the partnership, or be enclosed in or accompanied by a letter, signed in the like manner, referring to the bill.
- (2) Where a bill is proved to have been delivered in compliance with sub-s. (1), it shall not be necessary in the first instance for the advocate and solicitor to prove the contents of the bill and it shall be presumed until the contrary is shown to be a bill bona fide complying with this Act.

This section makes it manifestly patent that no action may be commenced for the recovery of any costs until the expiration of one month from the delivery of a bill of costs except as authorised by the LPA. However, where such an action is sought to be commenced before the expiry of the one-month period then leave of court is required. It will therefore be seen that the section makes the delivery of a bill of costs a condition precedent to the commencement of an action for the recovery of the costs except as authorised by the LPA. It

- a* follows that the plaintiff's argument that s. 121(1)(b) is only applicable when no bill of costs has been delivered cannot be sustained. With respect, therefore, I am unable to agree with his submission. Though it is implicit in my ruling that s. 124 applies to a bill containing detailed items as well as a gross sum bill I shall revert to its applicability to the latter in more detail in a later part
- b* of the judgment. I agree with the submission of learned counsel for the defendant that s. 121 must be construed as a specific provision designed for gross sum bills though the route I take to arrive at the same conclusion is different. In this context it is pertinent for me to observe that a court is not bound by counsel's argument on the interpretation of a legislation. The fact
- c* that counsel have not supported a particular interpretation of a legislation does not, indeed must not, prevent a court from adopting that interpretation if it considers it to be correct (see *Statutory Interpretation* 4th Edn. by Pearce and Geddes at p. 5). In *Accident Touring & Advisory Committee v. Combined Motor Industries Pty Ltd* [1987] VR 529 McGarvie J said that the responsibility rests with the court for the correct interpretation to be placed
- d* on an enactment. In support of this view his Lordship cited the statement of Lord Wilberforce in *Saif Ali v. Sydney Mitchell & Co (A Firm)* AC 198 at p. 212,

- e* Judges are more than mere selectors between rival views – they are entitled to and do think for themselves.

- f* The conflict between s. 121(1)(b) and s. 126(1) read with s. 128(1) would only arise if the latter provisions in referring to a "bill of costs" contemplate that the phrase refers to a bill containing detailed items as well as a gross sum bill. In that event s. 121(1)(b) will be affected by s. 126(1) by virtue of both provisions dealing with the same subject matter. This will lead to a conflict between the time periods specified in the two sections. If the phrase as used in ss. 126(1) and 128(1) can be construed to refer only to a bill containing detailed items and not to a gross sum bill there will be no conflict between ss. 121(1)(b), 126(1) and 128(1) as they will then operate
- g* independently. In that event the time periods prescribed by ss. 126(1) and 128(1) will not affect the right conferred by s. 121(1)(b). This makes it necessary to determine whether a bill containing detailed items and a gross sum bill can be classified as "bill of costs". If they can be so classified then both the form of bills will fall within the scope of ss. 126(1) and 128(1) with the resultant ramification as stated above. Such a classification would depend
- h* on the meaning of the phrase "bill of costs" as used in the relevant provisions of the LPA. The two form of bills are the bills that a solicitor may deliver to his client as authorised by s. 121(1) which says that "... the solicitor's bill of costs may at the option of the advocate and solicitor either contain detailed items or be for a gross sum." Though s. 121(1) seems to place both form of bills in the same category s. 132 highlights the characteristic features of a bill containing detailed items to show otherwise. The section reads as follows:
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Bills of costs for taxation as between advocate and solicitor and client shall be drawn in the manner provided by the Rules of the High Court, and the taxation shall be governed by the Rules. a

There is therefore a prescribed manner of drawing up a bill of costs as between advocate and solicitor and client. The relevant rule of court governing the contents of a bill of costs for taxation is O. 59 r. 24 of the Rules of the High Court 1980 which reads as follows: b

(1) A bill of costs must distinguish, by insertion in separate columns, costs out of pocket from charges for work done and time expended, and showing by a statement, where the bill of costs is to be taxed between solicitor and client, all sums of money received from or agreed to be paid by the client in respect of the cause or matter under taxation, or in connection therewith. c

(2) Dates must be furnished to each item, but they shall be kept within the body of the bill, so as to leave the left hand margin for deduction. d

(3) Every bill must be headed in the cause or matter to which the same relates, with the name of the party whose bill, it is, and the judgment, direction or order under which the same is to be taxed, and whether the same is to be taxed between party and party or solicitor and client.

(4) A bill of costs must be indorsed with the name or firm and business address of the solicitor whose bill it is. e

Thus a bill of costs is a bill that contains detailed items in the manner prescribed by O. 59 r. 24. This accords with *Ex parte Farmers Fertilizers Corp Ltd* [1916] 16 SR (NSW) 645 where it was held that a bill of costs is a detailed account or memorandum of legal services rendered showing the specific items of work done and the specific charges allocated to each of those. The result is that a bill which is not drawn up as required by O. 59 r. 24 is not a bill of costs within the meaning of the rule and, consequently, s. 132. The distinction between both the form of bills is therefore obvious. The corollary is that a gross sum bill cannot be described as a bill of costs as it does not contain the required particulars. The reference in s. 126(1) to the right of taxation of a bill of costs clearly contemplates a bill of costs that is ready for taxation within the meaning of s. 132 read with O. 59 r. 24. As s. 128(1) refers to the six-month period in s. 126(1) it must also refer to a bill in the same form. Furthermore, the reference to taxation of a gross sum bill under s. 121(1)(b) and (c) with special powers conferred on the taxing officer by that section clearly excludes a gross sum bill from the ambit of ss. 126 and 128. Accordingly a gross sum bill cannot come within the scope of ss. 126(1) and 128(1) for the plain reason that no order for taxation can be made on it except as authorised by s. 121(1)(b). I therefore hold that the phrase f

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- a** “bill of costs” in ss. 126(1) and 128(1) cannot accommodate a gross sum bill as it is not a bill in taxable form within the meaning of s. 132 read with O. 59 r. 24. To hold otherwise would lead to an absurdity. Thus the six-month period prescribed by s. 126(1) and the injunction imposed by s. 128(1) do not apply to a gross sum bill. The law applicable to a gross sum bill would
- b** therefore be as stated in s. 121.

- I now return to s. 124 which, as I said earlier, demolishes the substratum of the argument advanced by the plaintiff. This is an important provision in the LPA. It requires a bill of costs to be delivered to the chargeable person before an action can be commenced for the recovery of costs. The reference to the
- c** delivery of a “bill of costs” in the section would, on a literal reading of the section, exclude a gross sum bill from its ambit in the light of the meaning of the phrase that I have discussed. This would preclude the commencement of an action to recover costs based on a gross sum bill. Whether that was the true intention of Parliament in enacting the section is best understood by first
- d** referring to some rules of statutory interpretation. It is a rule of construction that where a word is used consistently in a statute it should be given the same meaning consistently (see *Craig Williamson Pty Ltd v. Barrowcliff* [1915] VLR 450). But this rule can be abandoned if the context in which a word is used in one place in a statute compels some meaning other than the ordinary
- e** meaning to be given (see *Mort v. Bradley* [1916] SALR 129; *Madras Electric Supply Corporation Ltd v. Boarland* [1955] AC 667). Thus the meaning that I have ascribed to the phrase “bill of costs” in ss. 126 and 128 can be departed from in interpreting s. 124(1) if the context in which it is used in the latter section warrants it. This requires a consideration of some other rules of
- f** construction. It is settled law that no part of a legislation can be considered in isolation from its context; the whole of it must be considered (see *Cooper Brookes (Wollongong) Pty Ltd v. Commissioner of Taxation (Cth)* [1981] 147 CLR 297). It has been held that where there is lack of clarity in an enactment the court will seek the true intention of Parliament by attending to the whole of the statute and by constructing all the parts together (see *Re Pratt* [1972] QWN 69). There is an overriding rule of statutory interpretation that it may be impossible to give a full and accurate meaning to every word in a legislation (see *Brisbane City Council v. Attorney General (Qld)* [1905] 5 CLR 695). In such cases the duty of the court is to give the words the construction that produces the greatest harmony and the least inconsistency (see *Australian Alliance Assurance Co Ltd v. Attorney General (Qld)* [1916] St R Qd 135). Words which may be held to take a broad meaning if read on their own may have to be construed more narrowly when read in the light of the remainder of the section (see *TCN Channel Nine Pty Ltd v. Australian Mutual Provident Society* [1982] 42 ALR 496. In interpreting a section in a statute it is legitimate
- i** to look at other sections or subsections as throwing light on how much

importance Parliament attached to the matter under consideration (see *Milford Haven Conservancy Board v. Inland Revenue Commissioners* [1976] 1 WLR 817. Thus a legislation cannot be compartmentalised and scrutinised molecularly when interpreting it (see *Arataki Honey Ltd v. Minister of Agriculture & Fisheries* [1979] 2 NZLR 311). This rule permits the court to avoid an absurd construction (see *Ali v. Wolkind* [1975] 1 WLR 170) as well as repugnancy and inconsistency (see *Hamilton Harbour Commissioners v. City of Hamilton* [1976] 1 MPLR 133). In this regard I refer to *Kesultanan Pahang v. Sathask Realty Sdn Bhd* [1998] 2 MLJ 513 where Mohd Azmi FCJ said at pp. 545-546:

On the facts of the present appeal, I consider Lord Wensleydale's golden rule of construction to be the most relevant and instructive. I could do no better than to reproduce the judgment of Stephenson LJ in *Manson v. Duke of Westminster & Ors* [1981] 2 All ER 40 at p. 48 where his Lordship said:

I return therefore to Lord Wensleydale's golden rule cited by Lord Blackburn in *River Wear Comrs v. Adamson* [1877] 2 App Cas 743 at pp. 764-765, (1874-80) All ER Rep 1 at p. 12:

... that we are to take the whole statute together, and construe it all together, giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification, and to justify the court in putting on them some other signification, which, though less proper, is one which the court thinks the word will bear.

I shall now consider whether it was the intention of Parliament to exclude gross sum bills from the ambit of s. 124(1) in the light of the rules that I have adverted to. It will be observed that the underlying theme of s. 121 which deals with gross sum bills is the delivery of such bills to the persons chargeable before commencement of an action to recover the costs. Though the section itself does not expressly require delivery of a gross sum bill before commencement of an action it is worded on an implication that there must be such delivery. The section proceeds on such a basis without specifically referring to s. 124(1). On the effect of a section worded in such manner I refer to *Braunack v. Goers* [1979] 23 SASR 1 where White J said at p. 16,

It is not necessary for one section to refer specifically to another section before the first section can be construed as being subject or overriding or in some other way qualifying the other section.

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- a* Section 121 must therefore be read as being subject to s. 124(1) in the light of the reference that it makes to the delivery of gross sum bills. That would require s. 124(1) to be interpreted to include both form of bills. If such an interpretation is not given to s. 124(1) the language employed in the section would preclude the commencement of an action based on a gross sum bill
- b* and render s. 121 meaningless. This would not only lead to a head-on collision between that section and s. 121 with its reference to commencement of an action on a gross sum bill but would also produce absurd results in that an advocate and solicitor who has delivered a gross sum bill would be disabled from commencing an action to recover the costs. Furthermore, the use of the
- c* words "... recovery of *any* costs due for any business done ..." (emphasis added) in s. 124(1) preceding the words "... bill of costs ..." is wide enough to cover the costs in both the form of bills. These reasons suggest that it was not the intention of Parliament to restrict the operation of s. 124(1) to delivery of a bill containing detailed items only. In the premises, it is my view that
- d* Parliament intended to make the section applicable to both the form of bills. Accordingly, the phrase "bill of costs" in s. 124(1) cannot be given a literal interpretation as it implicitly refers to both form of bills. In order to give effect to the implicit intention of the section it is necessary to make it express. It is trite law that in construing a statute a court may make express what is implicit in it (see *Salemi v. MacKellar (No 2)* [1977] 137 CLR 396). Words in a statute
- e* can be modified in this way when it appears that the implication suggested is necessary (see *Aitkin v. The Commonwealth of Australia* [1972] 46 ALJR 631) to give the words sense and meaning in their context (see *Macquarie University v. Ryde Municipal Council* [1977] 1 NSWLR 304). However, there must be compelling reasons before words are implied into a statute (see
- f* *Commissioner of Pay-roll Tax v. RG Elsegood & Co Pty Ltd* [1983] 1 NSWLR 223). There are numerous cases in which words have been implied into a statute. See, for example, *R v. Curran & Torney* [1983] 2 VR 133; *Bakker v. Stewart* [1980] VR 17; *Ganke v. Deputy Commissioner of Taxation of the Commonwealth of Australia* [1975] 25 FLR 98; and *Symington v. Adelaide City Council* [1974] 8 SASR 209. The reasons that I have advanced indicate that
- g* there are compelling reasons to imply words into s. 124(1) as the implication of the section makes it necessary to modify it in order to construe it in its proper perspective and context. In implying words into s. 124(1) I seek guidance from the equivalent provision in s. 69(1) of the Solicitor's Act 1974 of England which reads as follows:
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Subject to the provisions of this Act, no action shall be brought to recover any costs due to a solicitor before the expiration of one month from the date on which a *bill of those costs* is delivered in accordance with the requirements mentioned in subsection (2); (Emphasis added).

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The words that I have emphasised show that the section is not confined to any one particular form of bill. This is particularly significant in the light of the fact that the Solicitor's Act 1974 of England has provisions which are similar to ss. 121 and 126 of the LPA. In order to make s. 124(1) applicable to a bill containing detailed items and a gross sum bill as intended the words "... bill of costs ..." in the section must be read as "... bill of those costs ..." as appearing in its English counterpart. Such an interpretation will give s. 124 the intended meaning.

The law enshrined in s. 121 is therefore clear. The solicitor's bill of costs may at his option either contain detailed items or be for a gross sum. Pursuant to s. 121(1)(a) the party chargeable upon whom a gross sum bill has been delivered may require the advocate and solicitor to deliver to him *in lieu* of the cost a bill containing detailed items, and the gross sum bill shall thereupon be of no effect. Upon delivery of the bill containing the detailed items the party chargeable may, if he desires to have the bill taxed, by petition obtain an order to that effect as provided by s. 126(1). If he does not take any action after having received the bill containing the detailed items then the sanctions contained in ss. 126(1) and 128(1) shall apply. On the other hand if the party chargeable does not take any step after service on him of the gross sum bill and an action is commenced for the recovery of the costs, his only remedy is to request for an order of taxation within a period of one month from the service on him of the writ or other originating process claiming for the costs. The taxation shall be on the gross sum bill as provided by s. 121(1)(b) and (c). Needless to say, he would have lost his right to a bill containing detailed items.

On the law that I have stated thus far, the defendant is clearly entitled to an order for taxation on the gross sum bill. In the upshot I allow the defendant's application with costs.

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